

**CONNECTICUT  
TRIAL LAWYERS  
ASSOCIATION**



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Raised Bill 5206

Public Hearing: 3-2-10

TO: MEMBERS OF THE LABOR AND PUBLIC EMPLOYEES COMMITTEE  
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)  
DATE: MARCH 2, 2010

**RE: SUPPORT FOR RAISED BILL 5206-- AN ACT PROVIDING AN  
INDIVIDUAL THE RIGHT TO BRING A DISCRIMINATORY  
PRACTICE ACTION IN SUPERIOR COURT RATHER THAN THE  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.**

The Connecticut Trial Lawyers Association **supports passage of H.B.5206**, which would allow individuals bringing discrimination cases under Connecticut's Fair Employment Practices Act ("FEPA") the option to bring their cases directly to court without having to wait 210 days as is currently required.

- (1) This act will allow these cases to be resolved more efficiently, saving time and money for individual employees and their employers.
- (2) It also will reduce the case load and burden on the Commission of Human Rights and Opportunities ("CHRO"), saving money for the state.
- (3) The cases affected by this Act are cases which ultimately are filed in court after the 210 day waiting period in the Commission. In addition, many of these cases ultimately end up in federal court. Thus, the Act will not increase the volume of cases filed in the courts, only the timing of when they are filed.

**A. The Current Statutes Make An Individual Seeking to Go to Court Wait 210 Days**

Under the current Fair Employment Practices Act (“FEPA”), an individual who brings a claim of discrimination must initiate their complaint with the CHRO. The claim must be filed within 180 days of the last discriminatory act. The individual then has the option of pursuing their claim administratively, through the CHRO process, or by asking for a release of jurisdiction from the CHRO and bringing their claims in court. If the individual wants to go to court, he has to wait 210 days (**7 months**) before they can ask for a release and then file their claim in court. According the CHRO’s annual reports, releases are granted in approximately 10-15% of their cases (270-340) each year.

#### **B. The CHRO Is Not An Attractive Forum For Litigating Certain Discrimination Claims**

Although the CHRO administrative process may be a more cost effective process for resolving simple pro se cases, it is not an option for more complex cases and for individuals who are represented by counsel. There are many reasons for this:

1. **Lack of Administrative Remedies:** An individual is not entitled to damages for emotional distress, punitive damages, and attorney’s fees in the CHRO.<sup>1</sup> A prevailing victim of discrimination in a jury trial is entitled to these broader remedies.

2. **Lack of Meaningful Discovery Process:** Unlike personal injury or contract claims, proof of discriminatory intent is generally circumstantial. This usually requires the individual to obtain access to their employer’s personnel policies and information. The CHRO lacks the

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<sup>1</sup> *Bridgeport Hospital v. CHRO*, 232 Conn. 91 (1995); *CHRO v. Truelove and McLean, Inc.*, 238 Conn. 337 (1996)

ability to obtain the necessary discovery from an employer. In contrast, the court allows a victim of discrimination to obtain testimony and relevant documents through its discovery process.

3. **Jury Trial:** Our legislature has given victims of discrimination the right to a trial by jury. The prospect of facing a jury trial is probably the strongest incentive for recalcitrant employers to resolve discrimination cases.

**C. The Current Process Imposes Additional Costs on Both Individuals and Employers**

The current CHRO filing requirement and 210 day waiting period for those cases going to court only creates an additional and unnecessary layer of litigation for employers and employees. During that 210 day period, the employer and employee will often “litigate” the Merit Assessment Review process. This process is not dispositive; if the employer prevails on getting the case dismissed on Merit Review, the individual can still go to court. It is an unnecessary and additional cost for both the individual and the employer.

**D. The 210 Day Delay Imposes an Additional Burden on Victims of Discrimination**

Many victims of employment discrimination are in dire straits; they are unemployed and facing the prospect of serious financial hardship. The seven month delay before they can file their case delays resolution of their claims, and exacerbates their personal situation. Often, these are individuals who least equipped to endure this additional delay.

**E. Removing the 210 Day Waiting Period Will Lessen the CHRO's Caseload**

The number of cases in which the CHRO grants releases to go to court is relatively small compared to the CHRO's overall caseload.<sup>2</sup> Permitting these cases to go to court more expeditiously will allow the CHRO to focus its resources more efficiently on those cases that remain under its jurisdiction and will be resolved administratively.

H.B. 5206 is a simple practical bill that will allow those discrimination cases that are going to go to court to be resolved in a more efficient manner. It eliminates an unnecessary and superfluous layer of litigation. The state, the individual, and employers will all save money.

CTLA **strongly urges support** of H.B. 5206.

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2

**CHRO Caseload/Number of Cases Released to Court**

<u>Year</u>	<u>Total # Cases Filed</u>	<u># Releases Granted</u>
2002-3 2211		282
2203-4 2236		273
2004-5 2057		334
2005-6 1968		344
2006-7 1783		318
2007-8 1814		291
2008-9 1716		310